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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,187	10/13/2005	Dilson Ferreira da Luz	27037	2219

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THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314

EXAMINER	
EASTWOOD, DAVID C	
ART UNIT	PAPER NUMBER
3731	
MAIL DATE	DELIVERY MODE
09/15/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/553,187	LUZ, DILSON FERREIRA DA	
	Examiner	Art Unit	
	DAVID EASTWOOD	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *1-16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 October 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Receipt is acknowledged of applicant's amendment filed 7/27/2009. Claims 1-16 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Claims 1-20 are pending and an action on the merits is as follows.

Applicant's argument with respect to claim 17 has been considered but is moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over John A. McCurdy M.D. (The Complete Guide to Cosmetic Facial Surgery 1981) in view of Luiz S. Toledo, M.D. (Video-Endoscopic Facelift Aesth. Plast. Surg. 18:149-152, 1994) and Zucherman et al. (US 2003/0018350) and Thomas Ray Stevenson (Surgery: scientific principles and practice, second edition, Lazar J. Greenfield et al. 1997).

Regarding Claims 17-19, McCurdy discloses infiltrating at least a portion of the face with a local anesthetic (p.118 first paragraph) with an adrenalin/epinephrine additive (p.47 paragraph 4-6), marking of an area for facelift (p. 118 paragraph 3), beginning facelift incisions through the anesthetized portion of the face anesthetized in the preauricular region and the other in the retro auricular region, detachment of the retro auricular region which extends from the ear lobe until the beginning of the occipital hairy region and incision in the temporal area (p. 118 paragraph 3) (p.119 paragraph 1)(Figure. 7), perform the resections and the SMAS-PLATYSMA treatment (p. 119 paragraph 1 and 2), sectioning of the redundant skin (p. 119 paragraph 3), application of a tubular aspiration drain to the detached area (to be removed within 12 to 48 hours post-op) (p.119 paragraph 4) (p.120 lines 5-7), final placement of a classic occlusive dressing with cotton and crepe band (p. 119 paragraph 5).

Regarding step d, McCurdy discloses the claimed invention except for the approximate 2.5 cm incision in the preauricular region. However, Toledo discloses a Facelift method using a 2 cm incision in the pre and retro auricular regions. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the

invention of McCurdy with the smaller incisions as disclosed by Toledo. Doing so would reduce the incised area thus reducing the amount of skin prone to scarring.

Regarding steps e-f and I and with respect to claim 18 and claim 19, McCordy discloses the claimed invention except for the dissection/detachment methods disclosed in steps e-f, the skin detachment device disclosed in step I and claim 19 including a surgical face detachment device with a thickness of 2 millimeters and the process of selecting the succession of surgical devices so that the increasing order of thickness varies up to 20 millimeters. However, Zucherman discloses a blunt dissector set, one of which having a thickness of 2mm (position centrally located between portion 110 and 108) (para. 12), multiple grades of thickness used to successively separate tissue to greater and greater widths (paragraph 13). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the blunt dissector set as disclosed by Zucherman. Doing so would provide a multiplicity of choices for the physician to use the appropriate sized dissector to meet the anatomical needs of the patient. Furthermore it would have been obvious to one of ordinary skill in the art at the time of invention that said dilation method would thereby launch a migration of blood platelets to the injured area, followed by formation of blood clots retained within the vascular extremities, which were subjected to progressive stretching with substantial tapering of their lumens prior to sectioning, thereby obtaining the incarceration of the clots in the extremities of the sectioned vessels and reducing blood flow.

Regarding steps g – h and l, McCordy discloses the claimed invention except for the detachment of tissue using a scalpel and scissors. However, Toledo discloses a tissue detachment method using a scalpel or scissors. (p. 150 paragraph 3). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the detachment means as disclosed by Toledo. Doing so would ensure the precision of the incision thus reducing the development of scar tissue.

Regarding step j, McCordy discloses the claimed invention except for performing the hemostasy by cauterization. However, Toledo discloses the use of cauterization for hemostasis. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the means for hemostasis as disclosed by Toledo. Doing so would provide a means for near instantaneously stopping bleeding from breached vessels.

Regarding step k, McCordy discloses the claimed invention except for the SMAS-PLATYSMA treatment. However Toledo discloses treating both the SMAS muscle group (p.151, column 2, 1st paragraph) and the platysma muscle in the cervical region (p.151 Column 2, 2nd paragraph). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the muscular treatments as taught by Toledo. Doing so would provide muscular support for the newly transported tissue.

Regarding step m, McCordy discloses the claimed invention except for the formation of a new tragus. However, It would have been obvious to one of ordinary skill

in the art at the time of invention to form a new tragus once the skin flap as disclosed by McCordy had been raised and sutured to the scalp and auricular region.

Regarding step o-p, McCordy discloses the claimed invention except for repeating the steps for the other side of the face and removing the dressing within the first 12 to 24 hours. However, Stevenson discloses the repetition of a face lift method for the other side of the face (p. 2270 2nd column lines 2-4) and that the dressing should be removed and examined within 24 hours (p. 2270 column 2 paragraph 3). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the repetition of surgical steps for the other side of the face as taught by Toledo. Doing so would ensure relative symmetry of the face of the patient. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the invention of McCordy with the wound examination dressing change as disclosed by Toledo. Doing so would ensure the detection of possible hematomas.

Regarding claim 20, McCurdy discloses the claimed invention except for using, as the anesthetic, a lidocaine solution plus bupivacaine applied to at least one hemi-face. It is old and well known in the art to combine anesthetics for use in particular applications. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a combination of bupivacaine and lidocain since the examiner takes Official Notice of the equivalence of any of the local anesthetics disclosed by McCurdy (p.47 para. 5) and bupivacaine for their use in the cosmetic

surgical art and the selection of any of these known equivalents or combination there of to anesthetize an operative field would be within the level of ordinary skill in the art.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID EASTWOOD whose telephone number is (571)270-7135. The examiner can normally be reached on Monday thru Friday 9 a.m. to 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DAVID EASTWOOD/
Examiner, Art Unit 3731

/Anhtuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
9/14/09